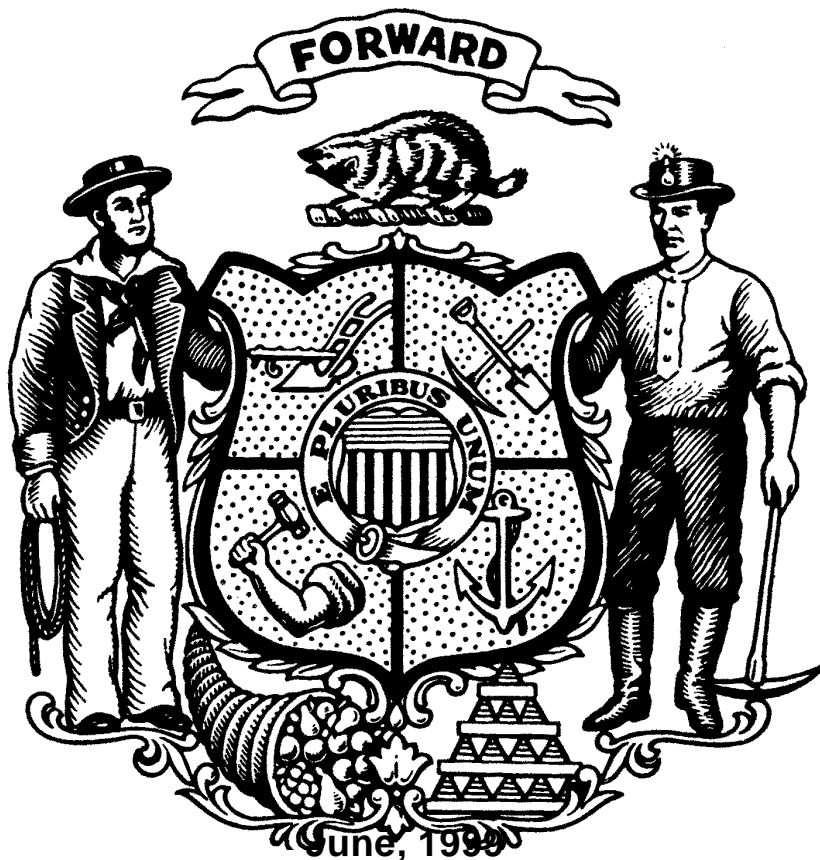


CASE FINDING DETERMINATIONS
IN CASES OF
CHILD ABUSE AND NEGLECT



DEPARTMENT OF HEALTH AND FAMILY SERVICES
DIVISION OF CHILDREN AND FAMILY SERVICES
BUREAU OF PROGRAMS AND POLICIES

INTRODUCTION

Since 1968, county agencies have been required to make a determination as to whether child abuse occurred in cases of reported alleged maltreatment. Over the years, statutory requirements have expanded to include making determinations in reports of neglect, as well as abuse, and determining whether abuse or neglect is likely to occur. Policies regarding case finding terminology have also changed over the years.

In 1986, The Investigation Handbook for Child Protective Services Workers was distributed. It introduced the terminology "substantiated", "unsubstantiated", and "not able to substantiate" for case findings in cases of alleged child abuse and neglect. It also introduced the concept of "in need of protection or services" as a part of the case finding decision. This terminology was then put into use to fulfill the statutory requirements to make a determination as to whether abuse or neglect had occurred or was likely to occur and to report statistical information to the Department.

In 1994, the Child Protective Service Investigation Standards was published and disseminated, making the Investigation Handbook for Child Protective Services Workers obsolete. Therefore, there is a need to redefine case findings in a manner which reflects current practice and policies. This document introduces new case finding terminology, removes the concept of "in need of protection or services" from the case finding decision, and gives guidelines for making case finding determinations.

The case finding decision is critical. It has implications for whether a family will receive services, whether a child care or foster care license may be revoked and, under recent state legislation, whether a person may hold certain licenses or be employed in certain professions. It also impacts decisions regarding court action and removal of children from their homes. As such, it requires careful deliberation and supervisory oversight and approval.

Case Findings In Cases of Alleged Child Abuse or Neglect

Wisconsin statutes state that "The county department shall determine, within 60 days after receipt of a report, whether abuse or neglect has occurred or is likely to occur. The determination shall be based on a preponderance of the evidence produced by the investigation."
[Ref. s. 48.981(3)(c)4.]

This statutory requirement is reinforced in the Child Protective Service Investigation Standards (Investigation Standards), which, in part, defines decisions that must be made during the course of an investigation. One such decision is whether "the maltreatment or threat of maltreatment (is) substantiated." **Separate case finding terminology will be used for maltreatment that is alleged to have occurred and maltreatment that is alleged to be likely to occur.**

The case finding terminology which shall be used for allegations that abuse or neglect has occurred is the following:

Substantiated -

There is a preponderance of the evidence that abuse or neglect has occurred.

*Substantiated/
Mutual Sexual Activity -*

There is a preponderance of the evidence that sexual contact or sexual intercourse occurred which was mutual and had no aspects of assault, coercion or exploitation.

Unsubstantiated -

There is not a preponderance of the evidence that abuse or neglect has occurred or evidence gathered lends weight to the belief that abuse or neglect did not occur.

*Critical Sources of Information
Not Accessible/
Unsubstantiated -*

Critical sources of information necessary for establishing a preponderance of evidence cannot be found or accessed.

In making a determination about substantiation, the county agency is making a decision about whether the maltreatment alleged in the report occurred or exists. If, during the course of the investigation, information surfaces which raises the possibility that additional maltreatment or a different form of maltreatment has occurred, that information must be pursued and a decision made about whether that maltreatment is substantiated. Therefore, it is possible for a report to allege only physical abuse, but for the investigation to conclude that both physical abuse and neglect are substantiated, or that physical abuse is unsubstantiated but that neglect is substantiated. Both decisions must be documented in the record and on the state reporting form.

As indicated above, a case may be unsubstantiated for different reasons, but in all unsubstantiated cases the similarity is that there is not a preponderance of evidence that abuse or neglect occurred. The additional requirements for determining that critical information sources cannot be found will be discussed later.

The case finding terminology that shall be used for allegations that a child has been threatened with abuse or neglect and a belief that abuse or neglect is likely to occur is the following:

*Abuse or Neglect is
Likely to Occur -*

There is a preponderance of the evidence that justifies a belief that abuse or neglect is likely to occur.

*Abuse or Neglect Not
Found Likely to Occur -*

There is not a preponderance of the evidence that justifies a belief that abuse or neglect is likely to occur, or evidence gathered lends weight to the belief that the likelihood of abuse or neglect is not significant or is low.

*Critical Information
Sources Not Accessible/
Abuse or Neglect Not
Found Likely to Occur -*

Critical sources of information necessary for establishing a preponderance of evidence cannot be found or accessed.

The above findings must be used to make determinations in all cases where a belief that abuse or neglect will occur is reported to the agency. In addition, if during the course of the investigation of allegations that abuse or neglect has occurred the worker discovers circumstances that justify a belief that abuse or neglect is likely to occur, this finding must be documented in the record and on the state reporting form. For example, a caller may report physical abuse, which the agency investigates and determines to be unsubstantiated. However, the worker may see conditions in the home and behavior on the part of the parent that leads to a determination that abuse or neglect is likely to occur. In that case, there would be two documented findings: 1) unsubstantiated physical abuse and 2) abuse or neglect is likely to occur. More will be said about this later. Conversely, the agency may be responding to an allegation that maltreatment is likely to occur and find upon investigation that actual abuse or neglect has occurred. In this case, there would also be two findings.

The above case finding decisions are made as part of the county agency's process in determining who may need services. Section 48.981(3)(c)7. states: "...The county department shall coordinate the development and provision of services to abused and neglected children and to families where abuse or neglect has occurred or to children and families where circumstances justify a belief that abuse or neglect will occur." The decision to offer or provide agency services, however, is separate from the substantiation decision and likelihood decision and takes into account additional considerations.

Documentation

The case finding decisions must be documented in the case record. [See the Investigation Standards.] The record must clearly state the type of maltreatment which has been substantiated, since it may be something other than the type of maltreatment reported. The record should reflect all appropriate determinations. For example, if the agency has determined that maltreatment is unsubstantiated, but that it is likely to occur, both decisions must be in the case record. **Additionally, the information that supports the case finding decisions must be clearly documented.** [See the Investigation Standards.]

The case findings must also be recorded on the state reporting form. All pertinent decisions on a case must be recorded, as outlined in the instructions for the CFS-40 form.

Preponderance of the Evidence

The statutes require that the decisions be based on a "preponderance of the evidence". The information which must be gathered for decision making is described in the Investigation Standards. In the Maltreatment By Parents Standard, the required information gathering includes:

- the maltreatment and circumstances leading up to it,
- the child's functioning and effects of any maltreatment,
- the parents' individual functioning and parenting practices,
- the family's functioning, strengths and current stresses, and
- how the family responds to intervention.

Other standards in the Investigation Standards define other categories of required information gathering. Exactly how much information, however, constitutes a "preponderance of the evidence"?

The term *preponderance of the evidence* is referenced only once in the child abuse reporting law. It is found under s. 48.981(3)(c)4. (see above), and is presented in the context of identifying the level of proof under which the county department social worker should conclude that child abuse or neglect has occurred or is likely to occur.

The term *preponderance of the evidence* is the level of proof which, as a whole, shows that the fact sought to be proved is more probable than not. It is that level of proof or persuasion which is more credible and convincing to the mind. The term then might be defined as the *amount of proof which would allow an individual to conclude that the existence of abuse or neglect is more probable to have occurred than not*.

The only definition for *preponderance of the evidence* as used in Ch. 48, Stats., is found in case law. In the case In Interest of T.M.S., the appellate court specifically stated, "It requires that the fact finder must be satisfied to a reasonable certainty by the greater weight of the credible evidence".

In applying this standard, the worker must consider two issues:

- 1) *Whether the evidence gathered and reviewed by the social worker is **credible**.* Credible evidence is defined as evidence which is trustworthy, believable or dependable. The opposite would include evidence which is doubtful, unreliable or untrustworthy. For example, a written medical report reviewed by a social worker is credible evidence. The credibility of this report would substantially diminish if the contents of a medical report were read to the social worker over the phone by an unknown person. Therefore, in applying this standard, the social worker must be satisfied that the evidence being reviewed has indicators of being trustworthy. The ultimate question for the social worker which addresses the trustworthiness or reliability of the evidence is, "What about this information makes it credible or reliable?"
- 2) *Whether the evidence gathered and reviewed by the worker is **persuasive**.* Once the trustworthy evidence is reviewed, it must then be weighed by the worker. The worker must determine whether, based on all the evidence presented, the greater weight of the evidence supports the conclusion or persuades the worker that abuse or neglect has occurred or is likely to occur. Or, in the form of a question: Does the proof lead the social worker to conclude that the existence of abuse or neglect is more probable than its nonexistence?

Assessing both the reliability of the evidence as well as the persuasiveness of the evidence are critical to the worker's assessment. The analysis of both of these concepts leads to a preponderance of the evidence conclusion.

Preponderance of the evidence is a lower standard than clear and convincing evidence, which is the burden required to prove non-delinquency (CHIPS) cases in juvenile court. Therefore, even though there may not be sufficient evidence for a court to find that a child is in need of protection or services, there could be sufficient credible evidence for a worker's finding of "substantiated".

Furthermore, because the role of law enforcement and the standard of evidence for criminal conviction (beyond a reasonable doubt) differ from those of child protective services, law enforcement officers may conclude there is not enough evidence on a particular case to pursue charges. Yet the CPS worker may have sufficient evidence on the same case for a finding of "substantiated."

Determination Process

Information which is used in determining preponderance of the evidence includes the following:

- Physical evidence, such as the presence of injuries, the condition of the home, the condition of the child, the absence of food in the house, etc.
- Social/psychological/systems assessment information, such as information about child, parent and family functioning.
- Descriptions from all pertinent persons as to the alleged maltreatment and the circumstances leading up to it.

Sources of information include:

- Worker's observation and interviews with the principals of the report and family members, as appropriate and required in the Investigation Standards.
- Interviews with collaterals
- Agency records
- Written reports and evaluations from other professionals and disciplines.

The nature of the case and the Investigation Standards will dictate what sources of information are necessary in each case. For example, if a child needs medical attention associated with the alleged maltreatment, the medical information from the attending physician is critical to a substantiation determination. Whether it is important to have a written report signed by the physician in the case record depends on the case circumstances.

Although physical evidence is important and can be a strong deciding factor in substantiation, in many instances the physical evidence is inconclusive or non-existent. The telltale looped rope welt marks on a child's back or patterned cigarette burns are rare. It is also somewhat rare for parents to acknowledge their responsibility for neglectful or abusive conditions. This is an understandable, self-protective human response. Therefore, there is a need for the agency worker to gather and determine the credibility and persuasiveness of other types of information.

The requirements for information gathering in the Investigation Standards provide the basis for this decision making. Information about how parents generally parent, view and respond to their child, how they generally function and cope, how the family interacts and handles stress and where the child is at developmentally, as

delineated in the Investigation Standards, is extremely helpful in determining whether abuse or neglect occurred and is essential in determining whether it is likely to occur.

Case Example: A child care worker from a day care center calls the agency to report that a 20-month old boy showed up with a bruise and scrape on his face. The child points to it and says, "Mama". The child care worker knows little about the parents as the family is new to the center. The CPS worker visits the child at the center and notes that he demonstrates age-appropriate behaviors and skills and appears well nourished and healthy. The child interacts with the social worker, playing happily with various toys, but cannot talk about the injuries. The child care worker states that one or the other parent always shows up on time to pick up the child, that they hug him, hold him, and talk to him. The child is always happy to see his parents. The worker visits the home when the child and both parents are home. They are surprised, upset and somewhat embarrassed about the worker's visit. They assume that the day care center made the report, although the worker does not verify this, and they are bothered by the fact that the center did not call them first to ask about the injury. Both parents work and both are involved in parenting. They talk about their son warmly and with pride, and the mother quietly directs him in some play as she talks with the worker. Both parents share household duties, but the mother does a bit more of the cooking and direct child care. They are fairly new to the community, but have begun to settle in and just started making some contacts. They have been too busy to socialize, however. They appear supportive of each other and communicate easily with each other. They are more formal with the worker, but communicate directly. They describe how the child was hurt in a fall. He was with his mother in the kitchen, climbed up on the counter while the mother was at the stove, called "Mama" and then jumped. The mother caught him before he hit the floor but his face banged the edge of the side board as he went down. They describe the precautions they have taken to assure that it doesn't happen again.

The worker determines that the alleged abuse is unsubstantiated based on the following conclusions:

- The parents' explanations of how the injury accidentally occurred fit the injury.
- That explanation gains further credibility because of the absence of risk factors and the presence of the following family strengths:
 - The parents' interaction with the child is nurturing and demonstrates awareness of the child's needs at that age; they seem to enjoy the parenting role and see it as important.
 - The child appears very secure and happy with the parents.
 - The parents show good life skills: communication, coping, problem solving, etc.
 - The parents have a strong supportive relationship, which helps them deal with the stress of the recent relocation.
 - The child's development is age appropriate.

All of the above information is persuasive in supporting the credibility of the parent's explanation for the injuries. **Therefore, it is primarily the worker's knowledge of the dynamics of maltreatment, human behavior, family systems, child development, etc. and skills in interviewing and observing that provide the basis for determining whether abuse or neglect has occurred or is likely to occur.**

A report should not be unsubstantiated merely because the child or parent deny that the alleged incident occurred. Parents and children may deny as a conscious or unconscious way to protect themselves or others. The worker must use his or her knowledge and skills to determine whether the denial is credible.

Again, the information gathering required in the Investigation Standards will provide a basis for making these determinations.

It is critical for workers to be competent in assessment in any cultural context. The statutes specifically state "...In making a determination that emotional damage has occurred, the county department shall give due regard to the culture of the subjects...". [Ref. s.48.981(3)(c)4.] Clearly, this is true with all forms of maltreatment. Information gathered must be understood within its context. For example, a number of American Indian people have an extended family system of child rearing. Different adults take responsibility for different aspects of the parenting role. In this context, it would be erroneous to observe that the grandparents, aunts and uncles "parent" as much as the mother and father and therefore conclude that the parents are not fulfilling their role or have an aversion to parenting. It would also be erroneous to conclude that this traditional child caring and rearing arrangement is detrimental to the child, for it is a very supportive and nurturing practice.

On the other hand, a case should not be automatically unsubstantiated simply because the behavior in question is a traditional practice. For example, the practice of some Hmong to "kidnap" young teenaged girls to be brides may be substantiated as sexual abuse, regardless of its origins. However, it is still important to understand this behavior from the point of view of those involved and to be careful about how much emphasis is placed on labels, such as "substantiated sexual abuse," when the situation is being discussed and handled with the involved parties.

Substantiating a Specific Person as a Maltreater

State law does not require that a specific person or persons be identified as the maltreater as part of the case determination. This is especially true in instances of alleged physical abuse or sexual abuse, where the maltreater may not be a parent or other caregiver, but may be any person. Practically speaking, the person considered responsible for harming the child is generally identified in the course of an investigation.

A particular person should be substantiated as having maltreated a child only if there is a preponderance of the evidence not only that maltreatment has occurred, but also that the particular person identified maltreated the child(ren).

In Primary Caregiver cases, as described in the Investigation Standards, it is critical for CPS to identify the maltreater whenever possible in order to effectively assess and respond to safety and other protection needs of the child and assess permanency options. In Primary Caregiver cases, the Investigation Standards require that the alleged maltreater be interviewed by CPS. There may be some instances when this person refuses to be interviewed and the agency must make decisions based on the information obtained from others interviewed and from collateral contacts or reports. If there is sufficient credible information from these other sources to support a determination that the specific person maltreated a child, then the agency should make this decision and document it in the record.

In Secondary Caregiver situations, it is also important to identify the maltreater whenever possible in order to make decisions about safety in the facility for the identified child and any other potential victims.

Substantiating a particular person for maltreating a child in his or her care in a day care center or residential care facility may also be crucial in determining whether a person should be allowed to care for children or other vulnerable persons. The Investigation Standards require that alleged maltreaters in Secondary Caregiver situations be interviewed by CPS, law enforcement or appropriate licensing authorities. Again, if this person refuses to be interviewed, the agency must decide whether sufficient credible evidence exists from other sources to substantiate the maltreatment and the particular person as the maltreater.

In cases of abuse by Non-Caregivers, however, substantiating maltreatment by a specific person is often unnecessary, as long as CPS can determine that the risk of harm is not present in or supported by the family. The role of CPS in these cases is to assess protection and service needs of the child, not to control

the behavior of the maltreater. If parents or other responsible adults are meeting the child's needs, CPS may not need to intervene further. There are no requirements in the Investigation Standards that the alleged maltreater be interviewed by CPS or any other authority as a prerequisite to CPS decision making. The county agency may, however, have an inter-agency agreement that such cases will be referred to law enforcement for further investigation. Intervention with the maltreater in Non-Caregiver cases is generally a law enforcement function.

There are different issues involved in substantiating a particular person as a maltreater in Non-Caregiver cases when no interview has occurred than there are in Primary or Secondary Caregiver cases. In Non-Caregiver cases, the alleged maltreater often has not been given the opportunity to refute or explain the allegations against him or her. Indeed, he or she may not even be aware of the allegations.

If the alleged maltreater in Non-Caregiver cases has not been given an opportunity by either CPS or law enforcement to refute allegations, substantiation of a specific maltreater in the case record is generally inappropriate and difficult to support by a preponderance of the evidence. Such substantiation is usually unnecessary to fulfill CPS purposes. It also may expose the child victim to further trauma (testifying at an appeals hearing, harassment from the alleged maltreater, etc.). Therefore, when considering whether to substantiate a particular person as a maltreater in these cases, the county agency should assess not only whether sufficient information to support the decision exists, but also whether it is in the best interests of the child victim to do so.

Even though it may not be appropriate to substantiate a particular person as the maltreater in Non-Caregiver cases, there may clearly be a "preponderance of the evidence" to substantiate that abuse occurred. In these cases, the record should state both that abuse has been substantiated and the basis for this decision. The record should also state the agency's belief that abuse was committed by, for example, an adult male in a dating relationship or an adult stranger to the child and family, but that in the absence of an interview with the alleged maltreater, the agency is unable to substantiate a particular individual as the maltreater. If the county agency refers information about the maltreatment and the alleged maltreater to a law enforcement agency for further investigation, as provided for under s.48.981(3)(a) and s.48.981(7), Stats., this should also be documented in the record.

There may be instances in Primary and Secondary Caregiver cases where there is sufficient information to determine that a child has been abused, but not to determine the identity of the person responsible, regardless of interviewing that has occurred. In these instances, a case finding of "Substantiated" should still be made, and the record should reflect the reasons why it was not possible to identify the maltreater.

Another case situation in which it may be inappropriate to identify a person as a maltreater is where a child is reported as having abused another child. County departments should consider the age and maturity of a child in assessing whether the child should be held responsible as a maltreater. **In any case where a child under the age of 12 has abused another child, county departments should give very careful consideration before identifying that child as a maltreater.** The behavior of such children, however, may prompt the county department to identify them as in need of protection or services. In these cases, the record should identify the child and the problematic behaviors and document what occurred, reflecting the county's assessment and decisions. [Note: This information may continue to be used along with other pertinent information from the family record, to the extent authorized under s.48.981(7), to make appropriate decisions about placement, licensure and certification, if the child's parents hold or pursue a license/certification to care for other children.]

Substantiation of Physical Abuse

Physical abuse is defined in s. 48.02(1)(a), Stats., as "Physical injury inflicted on a child by other than accidental means." "Physical injury" includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm as defined under s. 939.22(14)." [Ref. s. 48.02(14g), Stats.]

Generally, in order to substantiate physical abuse, a worker would need to determine that:

- the child involved is under the age of 18, and
- the child has (or had) an injury, and
- that the injury was inflicted on the child by other than accidental means, and
- that the injury the child has or had falls within the definition in s.48.02(14g), Stats., and
- the determination that abuse has occurred is not "based solely on the fact that the child's parent, guardian or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child." [Ref. s. 48.981(3)(c)4., Stats.]*

In order to determine that the injury was not accidental, a worker does not have to have information that the person who inflicted the injury had a conscious intent to harm the child. Abuse should be substantiated if a person knowingly or recklessly engaged in behavior that resulted in the child being injured. For example, if a parent applies corporal punishment and the result is injuries defined as child abuse in the statutes, the abuse is substantiated, even if the parent did not intend to cause the specific injuries when applying the punishment. Also, if a frustrated, overwhelmed parent shakes a crying baby in an attempt to stop the baby from crying and unintentionally causes brain damage, the parent's actions should be substantiated as abuse.

An accidental injury, and therefore one that cannot be substantiated as abuse, is illustrated in the following example:

Case Example: A father has his toddler with him in the kitchen so that he can talk to her and keep an eye on her while he makes dinner. He leaves a heavy pot near the counter edge. In a moment, she climbs up on a partially opened drawer and pulls the pot over on top of her, raising a tender bump on her head. The father brings the child to her pediatrician to have her checked. There is no pattern of accidents occurring in this family and no reason to believe that supervision is inadequate.

The statutory definition of physical injury referenced above includes the words "is not limited to". This opens the definition of physical injury, and therefore physical abuse, to encompass harm to a child that is not specifically listed in the definition. In determining what other forms of harm might fit with the statutory intent, it is helpful to review the definitions of physical abuse of a child found in Chapter 948, Stats. Section 948.03 states that the "intentional" or "reckless causation of bodily harm" to a child is a felony. "Bodily harm" is defined in s. 939.22(4), Stats., as "physical pain or injury, illness or any impairment of physical condition." "Recklessly" is defined in s. 948.03(1), Stats., as "conduct which creates a situation of unreasonable risk of harm to and demonstrates a conscious disregard for the safety of the child." The term "injury" is not defined or limited and thus can refer to a broad range of degree of injury. The term "pain" is also not defined. Although it is unlikely that the legislative intent was to define transient, minor pain, such as might be

* Note: However, these circumstances may still suggest a referral for a CHIPS petition for necessary treatment, services or care.

experienced during a spanking or from a slap, as physical abuse, it is reasonable to assume that the infliction of severe or protracted pain, either intentionally or recklessly, should be considered as substantiated abuse. For example, an incident of a parent using a cattle prod on a child should be substantiated as abuse, regardless of whether injuries are noted.

The statutes are silent on how recent an injury must be to fall under the definition of abuse for purposes of reporting, responding, and making a substantiation decision. Please refer to the Numbered Memo, DCS 94-10: Child Abuse and Neglect Screening at Intake. If the report of alleged abuse is accepted and investigated, the decision to substantiate or not should be based upon all the pertinent information gathered, as it is in all cases.

Substantiation of Neglect

Neglect is defined in s. 48.981(1)(d), Stats., as "failure, refusal or inability on the part of a parent, guardian, legal custodian or other person exercising temporary or permanent control over a child, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child." This particular definition requires several elements to be established by a preponderance of the evidence. In order to substantiate that neglect has occurred, the worker must have information that establishes the following:

- the child is under the age of 18, and
- the child is not receiving care, food, clothing, medical or dental care or shelter, and
- this care which the child is not receiving is necessary, and
- this lack of care seriously endangers the physical health of the child, and
- this care to the child is not being provided as a result of failure, refusal or inability, and
- lack of care is not due to poverty, and
- the parent, guardian, legal custodian, or other person exercising temporary or permanent control is not providing this care to the child, and
- the determination of neglect is not made "based solely on the fact that the child's parent, guardian or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child" [Ref. 48.981(3)(c)4., Stats.]*

The elements set forth above identify each element which needs to be established to support a conclusion that neglect has occurred. Of these elements, the critical and often most difficult issues involve the determination of whether the care in question is necessary and whether the lack of care seriously endangers the physical health of the child. A determination of necessary care must be based upon an assessment of an individual child's needs. A determination of conditions or behaviors that seriously endanger a child's physical health should be based upon an assessment of whether the lack of care threatens the child's safety or is likely to cause long-range or permanent impairment to the child's development.

The following questions can be used by the worker to help determine if neglect is substantiated:

- What does the child need? (Consider age, physical/emotional/social/cognitive development, current physical and emotional condition, etc.)
- What will happen or is likely to happen if the child doesn't have the need met?
- Will the result be seriously injurious or detrimental to the child's physical health? Could it cause long-range or permanent impairment or harm to the child?

* Note: However, these circumstances may still suggest a referral for a CHIPS petition for necessary treatment or care.

- What role if any is the parent assuming in recognizing the child's needs and providing for those needs?

Substantiation of Sexual Abuse

Sexual abuse is defined in s. 48.02(1), Stats., as:

1) "Sexual intercourse or sexual contact under s. 940.225, 948.02 or 948.025."

[Ref. s.48.02(1)(b), Stats.] Section 940.225, Stats., addresses sexual assault of any person. Section 948.02, Stats., addresses sexual assault of a child, aged 15 years or less. Section 948.025 addresses "engaging in repeated acts of sexual assault of the same child", aged 15 years or less. "Sexual intercourse includes the meaning assigned under s. 939.22(36) as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required." [Ref. s.940.225(5)(c), Stats.].

"Sexual contact" means any of the following:

1. Intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant's or defendant's intimate parts if that intentional touching is either for the purpose of sexually degrading or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19(1), Stats.

[Ref. s.940.225(5)(b)1. and s. 948.01(5)(a), Stats.]

"Intimate parts" means the breast, buttock, anus, groin, scrotum, penis, vagina or pubic mound of a human being." [Ref. s.939.22(19)]

2. Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant." [Ref. s. 940.225(5)(b)2. and s. 948.01(5)(b), Stats.]

In order to substantiate that sexual intercourse or contact constituting abuse occurred, the worker must have information that establishes the following:

- the child involved is fifteen years old or less, or
- the child involved was 16 or 17 years old and did not or could not freely give consent, and
- that sexual intercourse as described above occurred with another person, or
- that sexual contact as described above occurred with another person and that it was done for the purpose of:
 - sexually degrading the complainant, or
 - sexually humiliating the complainant, or
 - sexually arousing or gratifying the defendant, or
 - the touching contained elements of actual or attempted battery.

There are two types of substantiation decision related to sexual abuse that can be made in these cases. The first is one of *Substantiated* abuse and the other is *Substantiated/Mutual Sexual*

Activity. (Refer to the current instructions for the CFS-40 form to learn how to capture this information on the data reporting form.)

The statutory language referenced above presents somewhat of a dilemma for county departments. It states that any sexual touching for gratification or sexual intercourse involving a child 15 years old or less is sexual abuse. For a child under the age of 16, consent is, by statute, irrelevant. By eliminating "consent" of a child as a potential defense, the statutory language protects children from being victimized, exploited or manipulated by older persons. However, it also has the effect of potentially defining developmentally normal sexual curiosity and behavior of children as abusive. Sexual behavior is part of normal growth and development and can be seen from birth on. For example, genital play with other children is common among four-year-olds, six-year-olds "play doctor" with both genders, and preadolescent boys get erections in response to erotic and nonerotic stimulation. This sexual behavior is part of normal growing up. It is not abusive.

Sexual intercourse or sexual contact involving a child under 16 years of age must be reported to the county agency, with the exceptions noted in the statutes under s.48.981(2m). Policy for how to proceed in these cases is found in the Investigation Standards. The variation of circumstances in these cases ranges from a mutual and benign exchange between two children that does not result in physical, emotional or developmental harm to either child, to, at the other end, coercive and assaultive sexual contact by one child on another. Cases reported to the county agency may also involve a child and a person who is 18 or more years of age.

County departments must make determinations about the reported sexual behavior, whether it occurred and whether what occurred was developmentally within normal bounds and mutual or whether it was assaultive, coercive or exploitative. The elements of coercion and exploitation can be subtle. A child 15 years old or younger may state that the sexual activity was mutual when conditions in the relationship suggest otherwise. The child's age and maturity should be considered in determining whether he or she is able to understand the consequences of sexual contact or sexual intercourse. In addition, a disparity in ages between the two persons should be considered. Generally, a significant age difference when a minor is involved can suggest that the minor (or, if both are minors, the younger child) was not an equal partner in the relationship. The mere fact, however, that one party is a legal adult, such as 18 years old, and the other party is under 16 years of age is insufficient in and of itself to result in a determination that the sexual activity was exploitative or coercive.

The county agency should determine that sexual activity involving a child is Substantiated if:

- sexual contact or sexual intercourse as defined above occurred, and
- the activity which occurred contained an element of assault, coercion or exploitation.

The county agency should determine that sexual activity involving a child is Substantiated/Mutual Sexual Activity if:

- the sexual contact or sexual intercourse which occurred was within the bounds of normal behavior for the child's developmental stage, and
- the behavior was mutual, and
- the behavior contained no elements of assault, coercion or exploitation.

In cases determined to be Substantiated/Mutual Sexual Activity, no person is identified as a maltreater.

It is possible for sexual activity involving a child to be mutual and non-coercive, yet still have negative consequences. For example, a girl may become pregnant as a result of mutual sexual intercourse. If the

activity itself, however, was mutual, without elements of assault, coercion or exploitation, the activity should be determined to be *Substantiated/Mutual Sexual Activity*, regardless of the outcome.

2) "A violation of s. 948.05" [Ref. s. 48.02(1)(c), Stats.] This section addresses "sexual exploitation of a child."

In order to substantiate that a violation of s. 948.05, Stats., occurred, the worker must have information that establishes the following:

- that the child is under the age of 18, and
- that the child was persuaded, induced, employed, used, enticed or coerced by another person to engage in sexually explicit conduct for the purpose of photographing, filming, videotaping, recording the sounds of or displaying the conduct in any way, or
- that the child was photographed, filmed, or videotaped engaged in sexually explicit conduct or the sounds of that conduct recorded or the conduct displayed in any other way.

3) "Permitting, allowing or encouraging a child to violate s. 944.30". [Ref. s. 48.02(1)(d), Stats.] This section addresses prostitution.

In order to substantiate that a child was allowed to violate s. 944.30, Stats., the worker must have information that establishes the following:

- the child involved is under the age of 18, and
- the child was permitted, allowed or encouraged by another person to engage in prostitution.

4) "A violation of s. 948.055." [Ref. s. 48.02(1)(e), Stats.] This section addresses intentionally causing a child to view or listen to sexual activity.

In order to substantiate that a violation of s. 948.055, Stats., occurred, the worker must have information that establishes the following:

- the child involved is under the age of 18, and
- another person intentionally caused the child to view or listen to sexually explicit conduct, and
- the person did so for the purpose of sexually arousing or gratifying the actor or humiliating or degrading the child.

5) "A violation of s. 948.10". [Ref. s. 48.02(1)(f), Stats.] This section addresses exposing the genitals or pubic area to a child or causing a child to expose genitals or pubic area.

In order to substantiate that a violation of s. 948.10, Stats., occurred, the worker must have information that establishes the following:

- the child involved is under the age 18, and
- another person caused the child to expose genitals or pubic area or exposed genitals or pubic area to the child, and
- the person did so for the purpose of sexual arousal or sexual gratification, and
- the child was not the defendant's spouse.

Credibility of the various involved parties is a major issue in many cases of alleged sexual abuse. Some forms of sexual abuse, such as fondling, may leave no physical evidence. Furthermore, it is not unusual for

the parent or others allegedly responsible to deny that the sexual abuse occurred. Careful, professional interviewing of all family members and others as required in the Investigation Standards, as well as adherence to an effective interviewing protocol, can elicit information to support a decision about substantiation. For example, a child's ability to describe some detail of the activity, particularly when the child is of an age where they are unlikely to have gained this knowledge on their own, lends credibility to the child's account. Siblings may corroborate various aspects of the child's account, such as the parent going into the child's room at certain times. Understanding the dynamics of sexual abuse and interviewing accordingly is critical in gathering information to either substantiate or unsubstantiate these reports.

Substantiation of Emotional Damage

The final form of abuse in s. 48.02, Stats., is "emotional damage for which the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms". [Ref. s. 48.02(1)(gm), Stats.] It is defined in the statutes in the following way: "'Emotional damage' means harm to a child's psychological or intellectual functioning. 'Emotional damage' shall be evidenced by one or more of the following characteristics exhibited to a severe degree: anxiety; depression; withdrawal; outward aggressive behavior; or a substantial or observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development." [Ref. s. 48.02(5j), Stats.]

In order to substantiate this form of abuse, the worker must have information that establishes the following:

- the child involved is under the age of 18, and
- the child has suffered harm to his/her psychological or intellectual functioning, and
- that harm is evidenced by one or more of the following characteristics exhibited to a severe degree: anxiety; depression; withdrawal; outward aggressive behavior; or a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.
- the child's parent, guardian or legal custodian has neglected, refused or been unable, for reasons other than poverty, to obtain necessary treatment or to take steps to ameliorate the symptoms.
- "due regard to the culture of the subjects" must be given. [Ref. s. 48.981(3)(c)4., Stats.]

Although it is very helpful to have a psychological or clinical evaluation to substantiate this form of maltreatment, it is not always absolutely necessary. Information about behaviors, emotional response or cognition that is outside normal bounds and normal variations and vicissitudes of children and adolescents may be used to determine whether an allegation of emotional damage is substantiated. A worker's knowledge of child development is important in supporting this conclusion. The worker may also use information about how the child used to function, to determine if there is a "substantial" change. School personnel are generally an excellent source of information in helping to determine how the child used to function and how the child's psychological or intellectual functioning has been impaired.

A case should not be substantiated merely because a parent chooses not to follow the treatment recommendations of educational, mental health or other professionals. Parents have a right and responsibility to determine what the needs of their children are. If treatment is necessary to remedy the harm, however, and the parent fails to provide it and fails to take steps to ameliorate the symptoms, emotional damage is established.

Critical Sources of Information Cannot be Accessed/Unsubstantiated

Critical Sources of Information Cannot be Accessed/Abuse or Neglect Not Found Likely to Occur

These determinations will rarely be used. This conclusion should only be reached if critical sources of information, such as the parent and child, necessary to gathering a preponderance of evidence cannot be accessed or found. If important information cannot initially be obtained by the normal avenues, other appropriate avenues for obtaining the information should be pursued. All appropriate attempts to gather assessment information should be exhausted before this conclusion is reached. This case finding does not mean that the worker has determined that abuse or neglect did not occur, but rather that he or she could not gather a preponderance of the evidence that it did occur.

This conclusion cannot be used as a catch-all for cases where the decision to substantiate or unsubstantiate is difficult to make. It also cannot be used when someone, such as a parent, refuses to share information during an interview. In these cases, the worker should pursue all other appropriate avenues of information gathering and combine any information thus gained with their observations of the parent to come to a conclusion of either substantiated or unsubstantiated.

Finally, this conclusion also cannot be used simply because some information that is appropriate to gather during an investigation may be missing. Usually, a thorough analysis of the information available will lead to a conclusion of substantiated or unsubstantiated.

A case in which "Critical Sources of Information Cannot be Accessed/Unsubstantiated" or "Critical Sources of Information Cannot be Accessed/Abuse or Neglect Not Found Likely to Occur" is illustrated in the following example:

Case Example: A caller states that a few days ago the neighbor woman was screaming at her preschool child and threatening to "beat him good" for not staying in his own yard. She then dragged him forcefully into the apartment. The caller has seen suspicious bruises on the child over the past six months and has seen the mother hit and kick the child. The CPS worker finds that the family has moved and left no forwarding address. The CPS worker is unable to track the family through any system, and no other collateral contacts are available.

Determining that Abuse or Neglect is Likely to Occur

Section 48.981(3)(c)4. Stats., states: "...The county department shall determine, within 60 days after receipt of a report, whether abuse or neglect has occurred or is likely to occur." **The determination of whether abuse or neglect is likely to occur must be made in the following circumstances:**

- the report alleges that the child has been threatened with abuse or neglect and behavior or conditions are identified that support a belief that abuse or neglect is likely to occur.
- the report alleges that the child has been abused or neglected and the responding social worker identifies additional behavior or conditions that support a belief that abuse or neglect is likely to occur.

Historically, county agencies have received very few reports of abuse or neglect that is likely to occur. **The great majority of reports statewide are of abuse or neglect that is believed to have occurred. However, in many of these cases, the conditions the social worker finds in the home will lead to a determination that abuse or neglect is likely to occur.**

It is not necessary to attempt to determine that a specific type of maltreatment is likely to occur.

For example, the social worker need not determine that sexual abuse as opposed to physical neglect is likely to occur, only that abuse or neglect (maltreatment) is likely to occur.

It is also not necessary to determine that a specific threat has occurred or been voiced. The statutes do require that certain persons report when they have "...reason to believe that a child seen in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur..." [Ref. s. 48.981(2), Stats.]. The statutes do not specifically require, however, that the worker make a determination as to whether a threat has occurred, only "whether abuse or neglect has occurred or is likely to occur..." [Ref. s. 48.981(3)(c)4., Stats.]

The term *likely to occur* connotes a degree of predictability or reliability supporting the conclusion that an event will take place in the future. The term does not have a specific statutory definition. Therefore, the ordinary and accepted meaning of the words applies. An interchangeable definition is *an event which is apt, probable or plausible to take place or happen*.

The term *threat* is not defined in the statutes. Section 48.981(3)(c)7., however, gives an indication as to what is intended by this term. It states, in part, that "the county department shall coordinate the development and provision of services to...children and families where *circumstances justify a belief that abuse or neglect will occur*." (Emphasis added.) **Therefore, a threat to a child's safety and well-being is not limited to an overt verbalized intention to do harm, but rather can be derived from the sum or pattern of behaviors, conditions, attitudes, beliefs, etc., on the part of caregivers and others, that places the child in a situation where he or she is likely to be harmed.**

As stated above, county agencies are required to coordinate services to children and families where circumstances justify a belief that abuse or neglect will occur. What, then, might constitute such circumstances? How does the county agency identify these families? What information is needed to support a conclusion or "justify a belief" that abuse or neglect will occur? As mentioned earlier, the Investigation Standards list areas of required information gathering. The information provides a basis for not only determining whether maltreatment occurred, but also for determining whether there is risk of maltreatment and if the child is unsafe, and for laying the groundwork for understanding the family and its needs. The information is analyzed differently to arrive at different decisions.

Both the process of risk assessment and the process of safety assessment are pertinent here. *Risk assessment refers to determining whether maltreatment is likely to occur in the future.* All investigations conducted according to the standards for Primary Caregivers in the Investigation Standards must include an assessment of risk. Theoretically, risk of maltreatment exists on a continuum, from low risk to high risk. It can be said that there is some risk of maltreatment in every family, even though that risk may be very low. Therefore, the statutory determination that abuse or neglect is likely to occur needs to be more precise than a judgment that there is some risk in the family. Furthermore, some risk factors are conditions over which a family has no control and cannot change, such as the number of young children in the family, number of caregivers, whether the caregiver was abused or neglected as a child, etc. Those types of risk factors should not be used in making the case finding determination that abuse or neglect is likely to occur. The finding should be based on primarily behavioral, rather than demographic, factors. Therefore, although risk assessment is a relevant concept, it is not sufficient, in and of itself, to support a case finding determination that abuse or neglect is likely to occur.

Safety assessment refers to a determination as to whether a child is in imminent danger of serious maltreatment. All investigations, whether of primary, secondary or non-caregivers, must include an assessment of the child's safety. (See the Investigation Standards.) Because safety is more narrowly focused than risk assessment and identifies imminently threatening conditions with potentially severe

results, a determination during or at the conclusion of an investigation that a child is unsafe will always result in a finding that abuse or neglect is likely to occur.

There are other circumstances, however, where this determination may be made. If a parent, for example, commits an act towards the child that puts the child at substantial risk of harm, even though no harm has occurred, a finding that abuse or neglect is likely to occur should result. For example, a parent throws a child across the room in a rage or in total disregard for the child's safety and the child fortunately lands on a soft couch, preventing injury. The worker determines that physical abuse is unsubstantiated. However, the parent's behavior clearly caused a substantial risk of harm to the child. The worker concludes that abuse or neglect is likely to occur. (In this case scenario, the worker will also likely conclude that the child is unsafe.)

In general terms, the agency should conclude that abuse or neglect is likely to occur in the three following situations:

- **The child is determined to be unsafe as a result of the investigation/initial assessment.**
- **The alleged maltreater committed an act against the child that placed the child at substantial risk of harm, i.e., an act that a reasonable person could conclude would logically result in injury or other abuse or neglect to the child, regardless of the actual outcome.**
- **The alleged maltreater made a credible threat that he or she intended to injure the child or otherwise abuse or neglect the child.**

Even in cases where a parent or other person may have stated very clearly that they intend to harm the child, it is necessary to review whether conditions are present that lead to maltreatment. Since it is not unusual for parents to make off-hand comments that they do not really mean ("I'm going to kill that kid when he comes home!"), it is the worker's responsibility to evaluate if the stated intent is genuine. Has the parent harmed the child or others in the past? Is the parent exhibiting or has he or she exhibited violent or other out-of-control behavior? Does the parent feel justified in his or her behavior? Are any conditions making the child unsafe present? Thorough information gathering as prescribed by the Investigation Standards and appropriate analysis will provide the basis for interpreting this type of verbal threat.

The determination must be based on an individual assessment of the family. For example, a 19-year-old single mother who was abused as a child and who is isolated with a fussy baby and active two-year old might be considered, statistically, to be at risk of abusing or neglecting her children. But the statutory determination that abuse or neglect is likely to occur cannot be based on this information alone. The determination must be based on knowledge as to how this particular mother parents her children, handles stress, functions and copes with life, etc. If the information gathered during the investigation establishes, for example, that the mother screams at the baby and slaps him or has shaken him when he cries, frequently screams at and slaps the two-year-old in the face or closes herself up in her room to avoid dealing with them, that she becomes overwhelmed with routine problems and increasingly loses control, that she is depressed and angry with her life and feels her children have trapped her in a hopeless situation, the worker would conclude that the children are unsafe and make the determination that abuse or neglect is likely to occur.

The determination must be made based on conditions or behaviors that were present at the time of the referral or allegation. For example: The agency receives a referral that a mother's live-in friend, while caring for her children, briefly held a pillow over one child's face to stop him from crying. The child was uninjured and the mother subsequently evicted the friend. That friend's behavior at the time of the allegation should be assessed as to whether it placed the child at substantial risk of harm or if it made the child unsafe. Even though the child may be presently safe because of the protective actions taken by the mother,

the allegation of likely harm to the child, if it was accurate at the time, should result in a finding that abuse or neglect is likely to occur. In the circumstances just described, the friend would be designated as the maltreater of the child on the CFS-40, and the finding of abuse or neglect likely to occur would apply to the friend/maltreater, not to the mother.

In order to make a finding that abuse or neglect is likely to occur, the worker needs to be able to clearly describe the behaviors, conditions, etc. that are present and how they are (or were) likely to result in abuse or neglect of the child. This explanation must be documented in the record.

Although this determination calls for careful assessment of a family's circumstances and the family members' capacities and behaviors, it is not as precise or concrete a determination as substantiation. It employs greater use of judgment, is subject to the influences of the prevailing expert knowledge in the public child welfare field and it cannot be proved or disproved. However, it must be based on sound professional judgment. It requires the worker to have a thorough understanding of the dynamics of child maltreatment, human behavior, child development, family systems and other relevant social work theory, as well as an understanding of other related individual and family problems, such as mental illness, substance abuse and domestic violence. It also requires the worker to have a thorough understanding of those conditions and behaviors that make a child unsafe.

The following is an example of a case where an agency would make a case finding that abuse or neglect is likely to occur. The finding is based on the mother's specific behaviors and perceptions that make the child unsafe.

Case Example: A woman reports that the previous day she saw a neighbor slapping a preschooler in the face and head and then dragging her by the arm into the house, all the time yelling at the little girl about learning to come when she's called. She is afraid the child might have been badly hurt because she was crying so hard and the mother was so rough with her. The worker sees the child in the home, as she is not known to be in any day program out of the home. The girl has no observable injuries and shows no indication of having suffered any other injuries, such as trauma to the head. She does, however, appear hypervigilant about her mother and fearful about what her mother might do. The mother states that yes, she did what the reporter had described, but states she hadn't hit the girl that hard and "the kid has got to learn how to listen." She further describes her daughter as being willfully disobedient, lazy and purposefully trying to aggravate her mother, that she cried after being hit the previous day just to irritate her mother. She says this is the only way to make her daughter listen and she is going to keep doing whatever she has to "until the kid shapes up." Although the child appears well fed and adequately clothed, the mother appears to have no warmth or empathy for the little girl, and no interest in learning to interact with her child in a different way.

This case would be unsubstantiated, as it appears that abuse as defined by the statutes did not occur. But the worker would also make a determination that abuse is likely to occur, based on the following: the mother intended to hurt the child and shows no remorse, she exhibits violent behavior toward her young daughter and she has no nurturing feelings toward her daughter that might otherwise mitigate some of that anger and violence. She perceives her daughter as behaving in ways designed primarily to irritate the mother. She also is unmotivated to change her rough, physically aggressive behavior that affects her daughter's safety. In addition, the child is too young to protect herself and is afraid of her mother.

Sometimes it is difficult to differentiate between a finding that maltreatment has occurred and one that maltreatment is likely to occur. This is particularly true of neglectful situations, since neglect, by definition, contains an element of judging whether harm is likely to occur as a result of the parent's actions or behavior.

If the case is a situation that meets the statutory definition of neglect, as described previously, it should be substantiated as neglect. For example:

A worker responds to a report that a parent leaves a preschooler home unattended and determines it to be true. The worker substantiates this as neglect, even though the child was not yet harmed, because the parent failed to provide necessary care so as to seriously endanger the physical health of the child.

Parenting behaviors exist on a continuum, with extremely harmful or dangerous behaviors on one end and very nurturing, supportive, and positive behaviors on the other end. There are no rigid demarcations along this continuum. The determination that a child is likely to be abused or neglected is a social work conclusion based on an analysis of behaviors and conditions in a specific family or regarding a particular person and the meaning of those behaviors and conditions at a given point in time.

SUMMARY

Making case finding determinations is both a statutory requirement and a critical professional function. It requires thorough information gathering, careful analysis and sound professional judgment. The consequences of this determination can be significant for a family or individual. It is an agency decision that must be documented in the record, supported, in writing, by a preponderance of the evidence, approved by the worker's supervisor and shared with the subjects of the report and the parents of minor subjects of the report.